

EXHIBIT 1

DECLARATION OF JOSEPH C. KEARFOTT WITH EXHIBITS IN SUPPORT OF
DEFENDANTS' MOTION IN LIMINE REGARDING APPLICATION OF THE
COMMINGLED PRODUCT THEORY, CONSIDERATION OF FAULT OF NONPARTIES,
AND PROOF OF DATE OF HARM

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&
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December 13, 2006

VIA ELECTRONIC MAIL

Stuart A. Raphael
Hunton Williams
1751 Pinnacle Drive
Suite 1700
McLean, Virginia 22102

Re: All New York Focus Cases
Market Share Discovery

Dear Stuart:

Pursuant to the Court's November 29, 2006 order, we define below the "temporal," "geographic," and "vertical" contours of the MTBE market in the New York focus cases for purposes of alternative theories of liability. As we have explained before, these definitions are provided without the benefit of outstanding market share discovery which was propounded by the Suffolk and UWNY plaintiffs two years ago on defendants but which defendants have still not properly answered. As you know, this issue is currently before Special Master Warner.

The "temporal" scope of the market is each year beginning in 1979 up to, and including, 2004.

The "geographic" scope of the market is the market that supplied the New York harbor, which includes part of eastern New Jersey.

For purposes of alternative theories of liability, the "vertical" market includes the following: manufacturers, refiners, and blenders who manufactured, refined, or blended MTBE or gasoline containing MTBE.

Very truly yours,

WEITZ & LUXENBERG, P.C.

By: 

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cc: All Counsel of Record (via electronic mail)

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